

EXHIBIT 22

Excerpts to Deposition of Andrew Zimbalist, Ph.D (“Zimbalist 1st Dep.”)
(September 25, 2017)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

- - - - - x

Cung Le, Nathan Quarry, John Fitch
Brandon Vera, Luis Javier Vazquez,
and Kyle Kingsbury on behalf of
themselves and all others
similarly situated, Case No.
Plaintiffs, 2:15-cv-01045-RFB(PAL)

V.

Zuffa, LLC, d/b/a Ultimate,
Fighting Championship and UFC,
Defendants.

- - - - - x

HIGHLY CONFIDENTIAL
VIDEOTAPED DEPOSITION OF
ANDREW ZIMBALIST, Ph.D.
Northampton, Massachusetts

Magna Legal Services Reported By:
(866) 624-6221 MaryJo O'Connor, RMR/CSR
Www.MagnaLS.com Job No: 345726

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Monday, September 25, 2017

7

8:42 a.m.

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9

VIDEOTAPED DEPOSITION of ANDREW

10

ZIMBALIST, Ph.D., held at Hotel

11

Northampton, 36 King Street, Northampton,

12

Massachusetts, pursuant to notice, before

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MaryJo O'Connor, Registered Merit Reporter,

14

Certified Court Reporter, and Notary Public

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in and for the Commonwealth of

16

Massachusetts.

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1	you selected as a yardstick or benchmark	01:03:17
2	for purposes of determining damages in an	01:03:20
3	antitrust case the five sports comparisons	01:03:24
4	that are in your report, correct?	01:03:29
5	A. Yes.	01:03:30
6	Q. Now, is there a literature in	01:03:31
7	your field that set standards for how you	01:03:35
8	go about selecting benchmarks or yardsticks	01:03:38
9	in this circumstance?	01:03:41
10	MR. CRAMER: Objection to form.	01:03:43
11	A. A literature that details the	01:03:46
12	best way to select yardsticks?	01:03:51
13	Q. That sets standards for setting	01:03:53
14	yardsticks.	01:03:55
15	MR. CRAMER: Objection to the	01:03:56
16	extent it calls for a legal	01:03:57
17	conclusion. But you can answer, if	01:03:58
18	you understand the question.	01:04:00
19	A. I'm not sure there is a broad	01:04:07
20	literature. There are certain standards	01:04:08
21	where you try to take benchmarks that have	01:04:10
22	as much basic in common with the thing	01:04:13
23	you're comparing it to.	01:04:19
24	Q. All right. If --	01:04:21
25	A. And it varies with one important	01:04:22

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1 characteristic. 01:04:25

2 Q. All right. If I wanted to 01:04:28

3 determine how an economist for purposes of 01:04:32

4 estimating damages using a yardstick or 01:04:35

5 benchmark in an antitrust case should go 01:04:38

6 about selecting an appropriate yardstick or 01:04:45

7 benchmark, where would I look? 01:04:48

8 A. You're asking me for the name of 01:04:51

9 an article or articles or a book? I can't 01:04:53

10 give that to you as I sit here. 01:04:56

11 You're talking about an antitrust 01:04:59

12 case rather than in general. You look for 01:05:01

13 industries that have competition in the 01:05:04

14 area that you're trying to identify that 01:05:06

15 have -- at the same time have as much in 01:05:11

16 common with the enterprise or the industry 01:05:14

17 that you're comparing it to. 01:05:16

18 Q. All right. Now, you say there 01:05:22

19 would have to be as much in common. Is 01:05:30

20 there a field of study that I would look 01:05:34

21 to, a type of article, a type of study? 01:05:37

22 How do I go about determining 01:05:43

23 what are the standards for an economist in 01:05:45

24 choosing a yardstick or benchmark in a 01:05:47

25 situation such as this? 01:05:51

1 A. I can't point you to any journal 01:05:51

2 article. 01:05:54

3 Q. In picking a yardstick, would you 01:05:55

4 agree with the statement that you should 01:06:07

5 identify a firm or firms that are similar 01:06:09

6 to Zuffa in all respects except for the 01:06:14

7 impact of the alleged antitrust violation? 01:06:18

8 A. I believe that, as I said a 01:06:22

9 moment ago, that you try to pick 01:06:26

10 comparators that have as much in common 01:06:29

11 with the base enterprise or industry as 01:06:32

12 possible but vary in the important respect 01:06:34

13 that you're trying to identify. 01:06:38

14 Q. So what you have said is slightly 01:06:43

15 different than what I said, and I want to 01:06:45

16 explore that. 01:06:47

17 So you're using the phrase "as 01:06:48

18 much in common," and I'm using "similar in 01:06:51

19 all respects except for the impact of the 01:06:54

20 alleged antitrust violation," right? 01:06:56

21 A. Okay. 01:06:58

22 Q. Is it the appropriate standard 01:06:58

23 that you should identify a firm or firms 01:07:05

24 that are similar to Zuffa in all respects 01:07:07

25 except for the impact of the alleged 01:07:09

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1	antitrust violation?	01:07:11
2	MR. CRAMER: Objection. Asked	01:07:13
3	and answered. Also object to the	01:07:13
4	extent it calls for a legal	01:07:16
5	conclusion. But asked and answered,	01:07:17
6	and form.	01:07:18
7	A. If you're asking me --	01:07:19
8	Q. My question is --	01:07:21
9	A. If you're asking me wouldn't it	01:07:22
10	be desirable to have everything exactly the	01:07:24
11	same except the level of competition, I	01:07:26
12	would say yes.	01:07:28
13	We're doing the real world, not a	01:07:29
14	laboratory experiment here, and so you try	01:07:32
15	to find as much as possible in common	01:07:34
16	except for the variable that you're trying	01:07:36
17	to identify the impact of. That's what I	01:07:38
18	believe.	01:07:40
19	Now, if you want to use just	01:07:40
20	boxing at the 62.2 percent, which is a low	01:07:43
21	percentage, because I didn't consider some	01:07:46
22	higher percentage information, if you want	01:07:49
23	to use just boxing, I'll come out with	01:07:52
24	larger. And they're not identical in other	01:07:55
25	respects, but they're very similar.	01:07:58

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1	Q. And as I understand it,	01:57:43
2	historically at some point movie actors	01:57:45
3	were not free agents due to a studio system	01:57:49
4	which employed long-term exclusive	01:57:53
5	contracts?	01:57:54
6	A. Yes.	01:57:55
7	Q. And the long-term exclusive	01:57:55
8	contracts had a number of extension	01:57:57
9	provisions?	01:57:58
10	A. Yes.	01:57:59
11	Q. And the studio system eventually	01:57:59
12	ended; is that right?	01:58:03
13	A. Yes.	01:58:04
14	Q. And it ended when a court in	01:58:04
15	California held that personal service	01:58:08
16	contracts can't extend beyond seven	01:58:10
17	calendar years.	01:58:12
18	A. That's correct.	01:58:13
19	Q. And once the Court held that a	01:58:14
20	personal service contract could not extend	01:58:16
21	beyond seven calendar years, that ended the	01:58:18
22	studio system and essentially created free	01:58:21
23	agency.	01:58:26
24	MR. CRAMER: Objection to form.	01:58:26
25	A. That's largely correct.	01:58:27

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1 Q. Well, that's exact -- well. 01:58:28

2 And you say "Under the modern 01:58:33

3 system, studios renegotiate contracts for 01:58:35

4 every new project"; is that right? 01:58:38

5 A. Does it say that in the footnote? 01:58:40

6 Q. I believe -- 01:58:44

7 A. Can I look at the footnote? 01:58:44

8 Q. You have it right in front of 01:58:46

9 you. 01:58:47

10 A. Well, I need to know what page 01:58:48

11 we're looking at. 01:58:51

12 Q. Page 18. 01:58:52

13 A. (Document review.) Okay. It does 01:59:20

14 say that. Yup. 01:59:23

15 Q. And are there any contracts in 01:59:24

16 this case that you've identified that 01:59:26

17 extend beyond seven calendar years? 01:59:28

18 MR. CRAMER: Objection to form. 01:59:33

19 A. In the contract itself you're 01:59:34

20 saying as opposed to the -- 01:59:36

21 Q. Let's start with the contract 01:59:38

22 itself. 01:59:40

23 A. Not that I know of. The longest 01:59:40

24 one I think I saw was three or four years. 01:59:43

25 Q. And based on the yardsticks 01:59:45

1 you've applied, you would expect that 01:59:54
2 52 percent or more of revenues would go to 01:59:59
3 actors in a movie; is that right? 02:00:01
4 A. Not necessarily. 02:00:14
5 Q. Why? 02:00:19
6 A. Because I want to study more 02:00:20
7 about the cost structure of moviemaking. 02:00:22
8 Q. What is it about the cost 02:00:27
9 structure that would cause you to say that 02:00:29
10 something less than 50 percent of revenues 02:00:31
11 should go to the movie actors? 02:00:33
12 A. I'm just saying that I would want 02:00:36
13 to study it. I know a great deal about 02:00:38
14 professional sports, and I was comfortable 02:00:41
15 in making that comparison. And before I'd 02:00:44
16 be making such a comparison with the movie 02:00:47
17 business, I'd want to study it. 02:00:49
18 Q. What about the cost that you 02:00:51
19 would be looking at to determine why that 02:00:53
20 comparison would or would not be valid? 02:00:56
21 MR. CRAMER: Asked and answered. 02:00:59
22 He said he wanted to study it. 02:01:00
23 Q. That's what I'm saying. He 02:01:02
24 hasn't answered. 02:01:04
25 What is it you would be looking 02:01:05

1 at? What would you want to study to 02:01:06
2 determine whether it was an appropriate 02:01:07
3 comparison? 02:01:09

4 MR. CRAMER: Same objection. He 02:01:09
5 already answered. 02:01:10

6 A. So there are capital costs for 02:01:11
7 the physical studios, there are 02:01:16
8 transportation cost, there are insurance 02:01:19
9 costs, there are administrative costs. I 02:01:21
10 would like to study those, the size of them 02:01:24
11 and how they vary before I would throw this 02:01:27
12 into the hopper as a comparator. 02:01:30

13 Q. What would you be looking at to 02:01:35
14 determine with respect to those costs to 02:01:37
15 determine whether the comparison was valid? 02:01:39

16 A. I would want to look at the share 02:01:41
17 of those costs as a share of total revenue. 02:01:43

18 Q. So would you be looking at 02:01:48
19 whether the share of those costs was, for 02:01:50
20 example, higher than the share of similar 02:01:52
21 cost for Zuffa or less? I'm trying to 02:01:56
22 understand what you're looking for. 02:01:58

23 MR. CRAMER: Asked and answered. 02:01:59
24 Objection. 02:02:00

25 A. I would look at the relative 02:02:00

1 shares relative to Zuffa, relative to the 02:02:03
2 other comparators. 02:02:05

3 Q. Is there anything else you would 02:02:07
4 be looking at to determine whether it was 02:02:17
5 an appropriate comparison other than the 02:02:19
6 share of costs that were paid by the movie 02:02:21
7 studios? 02:02:29

8 A. Yeah. I'd want to look at risk. 02:02:29
9 I'd want to look at the variability of 02:02:32
10 revenue across projects. 02:02:34

11 Q. Why would the variability of 02:02:45
12 revenue across projects be relevant to you 02:02:48
13 in comparing two firms as yardsticks? 02:02:51

14 A. Because other things being equal, 02:02:54
15 you would expect two industries that were 02:02:56
16 otherwise identical where one of them had 02:02:58
17 more risk in it than the other, that in 02:02:59
18 order to attract capital, the industry that 02:03:02
19 had more risk would demand a higher rate of 02:03:04
20 return. And a higher rate of return would 02:03:07
21 mean there was less money available to pay 02:03:09
22 labor in general. 02:03:11

23 Q. And you said I want to look at 02:03:13
24 risk, I want to look at the variability of 02:03:15
25 revenue across projects. And I asked you 02:03:18

1	about variability of revenue. You just	02:03:20
2	answered risk.	02:03:20
3	Are those interchangeable for	02:03:22
4	purposes of this discussion?	02:03:24
5	A. Risk and variability of revenue?	02:03:25
6	Q. Yes.	02:03:28
7	A. Interchangeable, no. But very	02:03:28
8	similar. Overlapping. Substantial	02:03:31
9	overlapping.	02:03:34
10	Q. So you would want to look at in	02:03:35
11	determining whether to compare the firms,	02:03:37
12	you would want to look at the overall risk	02:03:39
13	profile, and that would include the	02:03:41
14	variability of revenue across projects?	02:03:43
15	A. Yes.	02:03:45
16	Q. Are there any other factors that	02:03:46
17	you would want to investigate or study to	02:03:53
18	determine whether the comparison to the	02:03:55
19	movie industry was appropriate?	02:03:57
20	A. Yeah.	02:03:57
21	Q. You've mentioned share of cost --	02:03:59
22	A. There might be. I can't think of	02:04:01
23	any as I sit here.	02:04:02
24	Q. You've got to let me finish the	02:04:03
25	question.	02:04:06

1 C E R T I F I C A T E

2

3 COMMONWEALTH OF MASSACHUSETTS

4 SUFFOLK, SS.

5 I, MaryJo O'Connor, a Notary Public
6 in and for the Commonwealth of
7 Massachusetts, do hereby certify:

8 That ANDREW ZIMBALIST, Ph.D., the
9 witness whose testimony is hereinbefore set
10 forth, was duly sworn by me and that such
11 testimony is a true and accurate record of
12 my stenotype notes taken in the foregoing
13 matter to the best of my knowledge, skill
14 and ability.

15 IN WITNESS WHEREOF, I have hereunto
16 set my hand and Notarial Seal this 2nd day
17 of October 2017.

18

19

20 MARYJO O'CONNOR, RMR/CSR
Notary Public

21

22

My Commission expires:

23 September 28, 2018

24

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